IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1585 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NATWARLAL SOMALAL RAWAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1585 of 1989
MR MUKUND M DESAI for Petitioner No. 1-8
MR MA PATEL, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 10/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

1. By this petition the petitioners have challenged the order dated 7/6/1988 recorded by the Special Land Acquisition Officer, Himatnagar, in not making a reference under Section 18 of the Land Acquisition Act, 1894 (Act) to the District Court for adjudication. Impugned decision is rendered essentially on the ground of delay in making application for reference, which is passed on 17/6/1988 by the Special Land Acquisition Officer. The Officer concerned has from the facts found that there was delay and, therefore, application for reference came to be rejected, which is precisely under challenge before us in this petition under Article 226 of the Constitution of India. There is no dispute about the fact that the reference application of the petitioner u/S. 18 of the Act is dated 2/5/1988. The award of the Land Acquisition officer was declared on 25/1/1988. It is the case of the petitioners that they were intimated by one notice dated 2/3/1988. Petitioners content that certified copy of such an award was applied for on 9/3/1988, which was received on 4/4/1988 and thereafter they applied to the Special Land Acquisition Officer u/S. 18 of the Act to make reference to the concerned District Court. In short, the plea advanced on behalf of the petitioners has been that in the aforesaid circumstances there was no delay in making an application for reference u/S. 18 of the Act.

2. In this connection, it will be interesting and expedient to look into the provisions of section 18 of the Act, which provides a provision for reference to Court. It reads as under :-

'18. Reference to Court.-

(1) Any person interested who has notr accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the lands, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken :

Provided that every such application shall be made,-

(a) if the person making it was

present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.'

It could very well visualized from the aforesaid provision that the making of a reference by the Collector to the Court concerned u/S. 18 is essentially an administrative exercise for which intention has to be made by the concerned applicant who has not accepted the award made by the Land Acquisition Officer. Therefore, an application u/S. 18 of the Act is not sine qua non for making reference to the Court. Not only that it has to be made within the time frame and statutory prescription of limit provided in section 18 itself. It appears from the record of the present case that the petitioners appear to have not accepted the award of the Land Acquisition Officer, submitted an application for making a reference to the Collector, is delayed and beyond time frame prescribed in section 18.

3. Sub-section (2) of section 18 of the Act provides that the application shall state the grounds on which the objections to the award of Land Acquisition Officer are proposed to be taken. It has to be in writing. It has to be preferred within a period of limitation prescribed in section 18. Such an application is required to be made if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award, but in any other cases within six weeks of the receipt of the notice of the Collector u/S. 12 (2) or within six months from the date of the Collector's award, whichever period is going to expire first. The mechanism of sub-section (2) of section 18 prescribes time frame, which must be adhered to, about which there is no controversy in this petition.

4. The dispute revolves round that the delay has occurred on account of making an application for certified copy, which was intended to be sent alongwith

the application u/S. 18 by the petitioners. In support of such a stand requiring certified copy to be placed alongwith an application for reference u/S. 18 nothing has been successfully shown or pointed out or even spelt out from the provisions. It is noticed from the record of the present case that the respondent authority had sent notice u/S. 12 (2) of the Act to the petitioners, the copy whereof is placed as Annexure-C, is dated 2/3/1988. Not only that, it was also stated in the notice that the amount offered under the award of the Land Acquisition officer could be collected without prejudice to the rights and contentions to move the civil Court. The copy produced at Annexure-A clearly goes to show that the notice was served to the petitioners on 2/3/1988. It was, therefore, not necessary for the petitioners to wait for obtaining the certified true copy for making a reference u/S. 18 of the Act.

5. Since award of the Land Acquisition officer, which was not accepted, was declared on 25/1/1988 and the communication to the petitioners about the same came to be made by a notice u/S. 12(2) on 2/3/1988. Contention is not supported from the record of the present case that the petitioners received it on 4/4/1988. It was also not necessary for the petitioners to wait for the certified copies as per the settled proposition of law. It is, therefore, evident from the record of the present case that the time frame device provided in section 18 sub-section (2) has not been adhered to and, therefore, the decision rendered by the respondent no. 1 - Land Acquisition Officer in not making a reference to the civil Court u/S. 18 is justified and could not be assailed. We are, therefore, satisfied that in this petition, unfortunately, the petitioners have no any substantive or other case for invoking the aids of the provisions of Article 226 of the Constitution of India, as a result of which the petition must fail.

6. Before parting and concluding this judgment, it would be necessary to recall that it is not necessary that the person concerned in whose case the award has been made by the Land Acquisition Officer is required to be furnished with the entire order or the text of the award. What is contemplated in the law is to intimate the party about the factum of having been passed such an order by the competent authority. Again waiting for a long time for obtaining the certified copy is not germane to the ground for invocation of extraordinary plenary and equitable writ jurisdiction under Article 226 of the Constitution of India. We have, therefore, no option but to raise our hands in helplessness, but to reject the

petition being meritless. Accordingly, petition is rejected. Rule discharged, without any order as to costs.

[J.N. Bhatt, J.]

[Akshay H. Mehta, J.]

* Pansala.